

Amendment No. 1 to HB0403

Hulsey

Signature of Sponsor

**AMEND Senate Bill No. 378**

**House Bill No. 403\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 43, Chapter 27, is amended by adding the following as a new part:

**43-27-201.**

The purpose of this part is to regulate the sale and distribution of products containing a hemp-derived cannabinoid.

**43-27-202.**

As used in this part, unless the context otherwise requires:

(1) "Batch" means a single stock keeping unit with common cannabinoid input or a hemp flower of the same varietal and harvested on the same date and manufactured during a defined cycle in such a way that it could be expected to be of a uniform character and should be designated as such;

(2) "Hemp-derived cannabinoid":

(A) Means:

(i) A cannabinoid other than delta-9 tetrahydrocannabinol, or an isomer derived from such cannabinoid, that is derived from hemp in a concentration of more than one-tenth of one percent (0.1%); or

(ii) A hemp-derived product containing delta-9 tetrahydrocannabinol in a concentration of three-tenths of one percent (0.3%) or less on a dry weight basis;

(B) Includes, but is not limited to:

(i) Delta-8 tetrahydrocannabinol;

(ii) Delta-10 tetrahydrocannabinol;

(iii) Hexahydrocannabinol;

(iv) Tetrahydrocannabiphorol (THCp);

(v) Tetrahydrocannabivarin (THCv); and

(vi) Tetrahydrocannabinolic acid (THCa); and

(C) Does not include:

(i) Cannabichromene (CBC/CBCa/CBCv);

(ii) Cannabicitran (CBT/CBTa);

(iii) Cannabicyclol (CBL/CBLa);

(iv) Cannabidiol (CBD/CBDa/CBDv/CBDp);

(v) Cannabielsoin (CBE/CBEa);

(vi) Cannabigerol (CBG/CBGa/CBGv/CBGm);

(vii) Cannabinol (CBN/CBNa);

(viii) Cannabivarin (CBV/CBVa);

(ix) Hemp-derived feed products allowed under title 44, chapter 6;

(x) Hemp-derived fiber, grain, or topical products; or

(xi) A substance that is categorized as a Schedule I controlled substance on or after July 1, 2023, including a substance that may be identified in subdivision (2)(B);

(3) "Manufacture" means to compound, blend, extract, infuse, cook, or otherwise make or prepare products containing a hemp-derived cannabinoid, including the processes of extraction, infusion, packaging, repackaging, labeling, and relabeling of products containing a hemp-derived cannabinoid;

(4) "Proof of age" means a valid driver license or other government-issued identification card that contains a photograph of the person and confirms the person's age as twenty-one (21) years of age or older;

(5) "Retailer" means a person or entity that sells products containing a hemp-derived cannabinoid for consumption and not for resale;

(6) "Serving" means a quantity of a hemp-derived cannabinoid product reasonably suitable for a single person's daily use; and

(7) "Supplier" means a person or entity that manufactures hemp-derived cannabinoids or sells products containing hemp-derived cannabinoids to retailers.

**43-27-203.**

(a)

(1) It is an offense for a person or entity to engage in the business of manufacturing, producing, or selling products containing a hemp-derived cannabinoid in this state without a valid license required by this part.

(2) A product containing a hemp-derived cannabinoid that is sold or offered for sale in violation of subdivision (a)(1) is subject to seizure and forfeiture pursuant to § 53-11-451.

(b)

(1) It is an offense to knowingly sell or distribute a product containing a hemp-derived cannabinoid without having first obtained proof of age from the purchaser or recipient.

(2) It is an offense for a person to knowingly sell or distribute a product containing a hemp-derived cannabinoid to a person who is under twenty-one (21) years of age or to purchase a product containing a hemp-derived cannabinoid on behalf of a person who is under twenty-one (21) years of age.

(3) It is an offense for a person to knowingly assist a person who is under twenty-one (21) years of age to purchase, acquire, receive, or attempt to purchase a product containing a hemp-derived cannabinoid.

(4) It is an offense for a person who is under twenty-one (21) years of age to knowingly purchase, possess, or accept receipt of a product containing a hemp-derived cannabinoid or to knowingly present purported proof of age that is false, fraudulent, or not actually that person's for the purpose of purchasing or receiving a product containing a hemp-derived cannabinoid.

(5) This subsection (b) does not preclude law enforcement efforts involving:

(A) The use of a minor if the minor's parent or legal guardian has consented to this action; or

(B) The use of a person under twenty-one (21) years of age who is not a minor if the individual has consented to this action.

(c) It is an offense to knowingly distribute samples of products containing a hemp-derived cannabinoid in or on a public street, sidewalk, or park.

(d) A violation of this section is a Class A misdemeanor.

(e) Notwithstanding this part to the contrary and except as provided in § 43-27-205, state and local law enforcement officers have concurrent jurisdiction to enforce violations of this section and § 43-27-204.

**43-27-204.**

(a) As used in this section:

(1) "Counter" means the point of purchase at a retail establishment; and

(2) "Retail establishment" means a place of business open to the general public for the sale of goods or services and does not include a place of business for which entry is limited to persons twenty-one (21) years of age or older.

(b) A product containing a hemp-derived cannabinoid must be maintained behind the counter of a retail establishment in an area inaccessible to a customer.

(c) A violation of this section is a Class A misdemeanor.

**43-27-205.**

(a) The department of agriculture is responsible for:

(1) Issuing licenses to suppliers and retailers under this part;

(2) Overseeing the manufacture and distribution of hemp-derived cannabinoid products by licensed suppliers, including ensuring compliance with labeling, product testing, and transportation requirements and conducting necessary inspections, prior to a product's delivery or sale to a retailer; and

(3) Conducting random, unannounced inspections at locations where hemp-derived cannabinoids and products containing hemp-derived cannabinoids are manufactured, distributed, or sold to ensure compliance with this part.

(b) The department of revenue:

(1) Is responsible for ensuring retailers are in compliance with this part and applicable tax provisions under title 67, including § 67-6-232;

(2) Shall enforce this part in a manner that may reasonably be expected to reduce the extent to which non-compliant hemp-derived cannabinoid products are sold and shall conduct random, unannounced inspections at retail locations where such products are sold to ensure compliance with this part. The

department of revenue shall determine the frequency of random, unannounced inspections required under this subdivision (b)(2); and

(3) Is authorized to confiscate non-compliant hemp-derived cannabinoid products as contraband in the manner described in title 53, chapter 11. All products that the department of revenue confiscates under this subdivision (b)(3) are subject to seizure and forfeiture pursuant to § 53-11-451.

(c) Each department shall submit an annual report to the general assembly describing in detail the department's compliance and enforcement efforts under this part. The report must also be published and made available to the public on each department's website.

**43-27-206.**

(a) A person or entity that is in the business of manufacturing or selling products containing a hemp-derived cannabinoid in this state, including as a supplier or retailer, must obtain a license from the department of agriculture authorizing the person or entity to engage in that business prior to the commencement of business or by January 1, 2024, whichever is later.

(b)

(1) In order to obtain and maintain a supplier or retailer license under subsection (a), a person must:

(A) Submit to the department of agriculture information prescribed by rules as necessary for the efficient enforcement of this part;

(B) Pay to the department of agriculture a fee of five hundred dollars (\$500) for supplier or two hundred fifty dollars (\$250) per retailer per location;

(C) Consent to reasonable inspection and sampling by the department of agriculture, or the department of revenue as applicable, of

the person's inventory of products containing a hemp-derived cannabinoid; and

(D) Submit to a criminal history background check that includes fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation.

(2) A person is not eligible to obtain or maintain a supplier or retailer license while serving a sentence for, or for ten (10) years following the date of conviction for, a drug-related felony offense in any state or federal jurisdiction.

(3)

(A) A retail location that is within one thousand feet (1,000') of a private school, public school, or charter school that serves any grades from kindergarten through grade twelve (K-12) shall not sell products containing a hemp-derived cannabinoid, unless the applicant provides the department with documentation that establishes that products containing a hemp-derived cannabinoid were being offered for sale at retail at such location on December 31, 2023.

(B) The department shall accept business records, photographs, and video recordings as documentation for purposes of determining whether an applicant qualifies for the exception in subdivision (b)(3)(A).

(C) For the purposes of subdivision (b)(3)(A), measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing a retail establishment to the nearest point on the property line of a parcel containing a private school, public school, or charter school that serves any grades from kindergarten through grade twelve (K-12).

(c) A license issued pursuant to this section is valid for a period of one (1) year and may be renewed annually. The department of agriculture shall charge an annual renewal fee equal to the initial licensing fee.

(d) The department of agriculture is authorized to:

(1) Determine requirements for and issue licenses for the manufacture or sale of products containing a hemp-derived cannabinoid in this state; and

(2) Deny or revoke licenses and issue civil penalties in the following manner for each violation of this part, or a rule promulgated pursuant to this part, as follows:

(A) One thousand dollars (\$1,000) for a first violation;

(B) Two thousand five hundred dollars (\$2,500) for a second violation that occurs within two (2) years of the first violation;

(C) Five thousand dollars (\$5,000) for a third violation that occurs within two (2) years of the first violation;

(D) Revocation of the license for a fourth violation that occurs within two (2) years of the first violation; and

(E) Require retraining of all employees of the licensee under the supervision of the department in addition to the civil penalty imposed pursuant to subdivisions (d)(2)(A)-(C).

(e) The revenue collected from fees established under subdivision (b)(1)(B) must be deposited in the Tennessee agriculture regulatory fund, created by § 43-1-701, and used exclusively for the administration of this part.

**43-27-207.**

(a) Testing of products and substances must be conducted as follows:

(1) Full-panel testing on all active cannabinoid molecules must be conducted prior to final production of products containing a hemp-derived cannabinoid; and



(2) A potency test must be conducted on finished goods to confirm potency is consistent with stated potency on the packaging.

(b)

(1) A supplier or retailer must contract with a third-party laboratory to provide the testing required by subsection (a).

(2) The department of agriculture is authorized to promulgate rules specifying which types of tests may be used to satisfy the requirements of subsection (a) and the qualifications for laboratories from which the department will accept test results.

(c) Each batch manufactured must undergo testing and obtain a certificate of analysis by a third-party laboratory qualified under subsection (b).

(d) The department of agriculture shall:

(1) Promulgate rules specifying pass/fail action levels for safety and toxicity with respect to the testing required by subsection (a);

(2) Maintain and post on its website a registry of testing laboratories that are qualified to test intermediate manufactured material and finished products containing a hemp-derived cannabinoid;

(3) Develop an application and process by which qualifying laboratories are listed on its website. The application submitted by a potentially qualifying laboratory must include a sample certificate of analysis issued by the applying laboratory; and

(4) Sample and analyze products containing a hemp-derived cannabinoid produced, distributed, or offered for sale in this state for cannabinoid concentrations, tested according to protocols prescribed by rule under this part. Departmental testing methods must employ liquid chromatography tandem mass spectrometry, in a manner similarly reliable to post-decarboxylation, to determine a cannabinoid profile of samples tested, including their THC concentrations.

**43-27-208.**

(a) Except as provided in subsection (b), a person transporting products containing a hemp-derived cannabinoid into, within, or through this state shall carry:

(1) Documentation sufficient to prove that the products being shipped or transported:

(A) Were produced from hemp that was lawfully produced under a state or tribal hemp plan approved by the United States department of agriculture, under a hemp license issued by the United States department of agriculture, or otherwise in accordance with federal regulations through the state or territory of the Indian tribe, as applicable; and

(B) Do not exceed the cannabinoid limits for hemp-derived cannabinoids; and

(2) A bill of lading that includes:

(A) Name and address of the owner of the products;

(B) Point of origin;

(C) Point of delivery, including name and address;

(D) Kind and quantity of packages or, if in bulk, the total quantity of products in the shipment; and

(E) Date of shipment.

(b) Subsection (a) does not apply to a person in possession of products containing a hemp-derived cannabinoid that were purchased from a retailer that is licensed under this part.

**43-27-209.**

(a) A product containing a hemp-derived cannabinoid that is sold at retail must:

(1) Satisfy the child-resistant effectiveness standards under 16 CFR 1700.15(b)(1) when tested in accordance with the requirements of 16 CFR 1700.20; and

(2) Be labeled with:

(A) A list of ingredients and possible allergens and a nutritional fact panel;

(B) A warning statement concerning the risk of impairment from consumption of the product, keeping the product out of the reach of children, and other warning information as required by rule of the department of agriculture;

(C) If the product is ingestible, the amount of cannabinoid in each serving of the product, measured in milligrams;

(D) The total amount of hemp-derived cannabinoid in the entire package, measured in milligrams;

(E) The net weight of the product;

(F) A quick response (QR) code that can be scanned to access a website providing the product's batch number, date received, date of completion, method of analysis for the testing report required under § 43-27-207, including information regarding results of the product's full-panel and potency tests conducted pursuant to § 43-27-207(a); and

(G) An expiration date.

(b) A person who obtains a product containing a hemp-derived cannabinoid that is sold at retail shall store any unconsumed portion of the product in its original packaging. It is a Class C misdemeanor offense for a person to violate this subsection (b).

(c) A retailer or supplier of a product containing a hemp-derived cannabinoid shall not advertise, market, or offer for sale a product containing a hemp-derived cannabinoid by using, in the labeling or design of the product or product packaging or in advertising or marketing materials for the product trade dress, trademarks, branding, or other related imagery or scenery that depicts or signifies characters or symbols known to

appeal primarily to persons under twenty-one (21) years of age, including, but not limited to, superheroes, comic book characters, video game characters, television show characters, movie characters, and unicorns or other mythical creatures.

(d) An ingestible product containing a hemp-derived cannabinoid shall not:

(1) Be sold in a serving that contains more than twenty-five (25) milligrams, in the aggregate, of one (1) or more hemp-derived cannabinoids; or

(2) Be formed into the shape of an animal or cartoon character.

(e) The department of agriculture is authorized to promulgate rules for the packaging, labeling, and display of products containing a hemp-derived cannabinoid that are offered for sale in this state.

**43-27-210.**

(a) This part does not permit a person to:

(1) Undertake any task under the influence of a hemp-derived cannabinoid when doing so would constitute negligence or professional malpractice; or

(2) Operate, navigate, or be in actual physical control of a motor vehicle, aircraft, motorized watercraft, or any other vehicle while under the influence of a hemp-derived cannabinoid.

(b) This part does not require:

(1) An employer to accommodate the use of a hemp-derived cannabinoid in a workplace or an employee working while under the influence of a hemp-derived cannabinoid;

(2) An individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use a hemp-derived cannabinoid on or in that property; or

(3) An individual or establishment in lawful possession of property to admit a guest, client, customer, or other visitor who is impaired as a result of the person's use of a hemp-derived cannabinoid.

(c) This part does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from use of a hemp-derived cannabinoid or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(d) This part does not:

(1) Limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy;

(2) Create a cause of action against an employer for wrongful discharge or discrimination; or

(3) Allow the possession, sale, manufacture, or distribution of any substance that is otherwise prohibited by title 39, chapter 17, part 4.

**43-27-211.**

The departments of agriculture and revenue are authorized to promulgate rules to effectuate this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 53-11-451(a), is amended by adding the following as a new subdivision:

(8) All products containing a hemp-derived cannabinoid that are manufactured, transported, packaged, labeled, displayed, distributed as samples, offered for sale, or sold in violation of title 43, chapter 27, part 2.

SECTION 3. Tennessee Code Annotated, Section 53-11-451(b), is amended by adding the following language immediately after the first sentence in the subdivision:

Property subject to forfeiture under title 43, chapter 27, part 2, may be seized by the director of the Tennessee bureau of investigation or the director's authorized

representative, agent, or employee; the commissioner of safety or the commissioner's authorized representative, agent, or employee; the commissioner of agriculture or the commissioner's authorized representative, agent, or employee; the commissioner of revenue or the commissioner's authorized representative, agent, or employee; or a sheriff, deputy sheriff, municipal law enforcement officer, campus police officer as defined in § 49-7-118, internal affairs director or internal affairs special agent of the department of correction, or constable upon process issued by any circuit or criminal court having jurisdiction over the property.

SECTION 4. Tennessee Code Annotated, Section 53-11-451(k), is amended by deleting the language "subdivisions (a)(1) and (7)" and substituting "subdivisions (a)(1), (7), and (8)".

SECTION 5. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following as a new section:

**67-6-232.**

(a) For the exercise of the privilege of engaging in the business of selling products containing a hemp-derived cannabinoid in this state pursuant to title 43, chapter 27, part 2, there is levied an additional tax at the rate of six percent (6%) of the sales price of products containing a hemp-derived cannabinoid when sold at retail in this state.

(b) The tax levied under this section is due and payable monthly on the first day of each month, and for the purpose of ascertaining the amount of tax payable under this section, all retailers making taxable sales on or before the twentieth day of each month shall transmit to the commissioner of revenue, upon forms prescribed by the commissioner, returns showing gross sales during the preceding month.

(c) All revenue generated from the tax levied pursuant to subsection (a) must be deposited into a special account in the state general fund, with fifty percent (50%) being allocated to the department of revenue and fifty percent (50%) being allocated to the

department of agriculture, to be used exclusively for the regulation of products containing a hemp-derived cannabinoid in this state.

SECTION 6. For purposes of promulgating rules or forms, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

(1) Sections 43-27-202, 43-27-203(b)-(e), 43-27-204, and SECTION 5 take effect July 1, 2023, the public welfare requiring it;

(2) For purposes of requiring the department of revenue to ensure that retailers are in compliance with applicable tax provisions, Section 43-27-205(b)(1) takes effect July 1, 2023; and

(3) All other sections take effect January 1, 2024, the public welfare requiring it.